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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/065,326

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Steven Curtis Zicker

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EXAMINER

KIM, JENNIFER M

ART UNIT

PAPER NUMBER

1628

MAIL DATE

DELIVERY MODE

01/27/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/065,326	Applicant(s) ZICKER ET AL.	
	Examiner JENNIFER M. KIM	Art Unit 1628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on October 16, 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed October 16, 2009 have been received and entered into the application.

Response to Arguments

Applicants' arguments filed June 4, 2009 have been fully considered but they are not persuasive. Applicants argue that Reinhart could not teach or suggest method of influencing behavior as recited by the instant claims based merely on Reinhart's teaching of reducing allergic and inflammatory conditions. This is not persuasive because applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, that the dietary deficiency and supplementation of omega-3 fatty acids have been associated with several effects on behavior is well known in view of Reisbick et al. It is well known in view of Reisbick et al. that DHA levels correlate simultaneously with both levels of dopamine and Dopamine2 receptors and certain behaviors. Therefore, one of ordinary skill in the art would reasonably expect that the pet food product comprising omega-3 fatty acids particularly, DHA would have an effect on animal behavior. One of ordinary skill in the art would recognize that the animals that have consumed the

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Reinhart composition comprising DHA would have better or different behavior because the product improved the general comfort and well-being of the animals and because the product comprise the active agent DHA which have effect on certain behaviors as taught by Reisbick et al. There is a reasonable expectation of successfully influencing behavior of the dog by providing comfort food comprising DHA associated with several effects on behavior that actually improves general comfort and well-being of the animals. Applicants argue that the claims have been amended to recite the language "in need thereof", and therefore, the subject matter recited in the pending claims is not obvious, based upon the Reinhart reference alone or in combination with the Reisbick reference because the Office has failed to show that there was an intent to use the compositions comprising at least about 1% by weight of an omega-3 fatty acid or mixture of omega-3 fatty acids as measured on a dry matter bases for influencing behavior in an animal. This is not persuasive because Reinhart teaches a pet food product containing omega-6 and omega-3 fatty acids from 3:1 to 10:1 and wherein at least 3% of the total fatty acids in the composition are the omega-3 fatty acids and that omega-3 fatty acids can be eicosapentaenoic acid and docosahexaenoic acid. The amount of omega-3 fatty acid taught by Reinhart is within the amount set forth in claim 11. To employ such product for the influencing behavior in an animal in need thereof is obvious in view of Reinhart as modified by Reisbick who teaches that the DHA levels correlate simultaneously with both levels of dopamine and Dopamine2 receptors and certain behaviors and improve the general comfort and well-being of the animals. It would have been obvious to one of ordinary skill in the art that animals treated with the

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pet food product of Reinhart containing DHA would influence the behavior of the animals upon the consumption of the product since the DHA levels corrects with certain behaviors and help improve the general comfort and well-being of the animals is old and well known in view of Reisbick and Reinhart.

Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinhart (EP 0678247A1) in view of Reisbick et al.

Reinhart teaches a pet food product containing omega-6 and omega-3 fatty acids from 3:1 to 10:1 and wherein at least 3% of the total fatty acids in the composition are the omega-3 fatty acids and that omega-3 fatty acids can be eicosapentaenoic acid and docosahexaenoic acid. (page 6, claims 1 and 2, claim 6). The amount of omega-3 fatty acid taught by Reinhart is within the amount set forth in claim 11. Reinhart teaches the product improved the general comfort and well-being of the animals. (page 6, lines 16-24).

Reinhart does not expressly teach the influencing behavior in an animal.

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Reisbick et al. teach that dietary deficiency and supplementation of omega-3 fatty acids have been associated with several effects on behavior. (page 419, summary).

Reisbick et al. teach that a decrease in dopamine and/or dopamine receptors in the prefrontal cortex of deficient animals increase their responsivity to environmental stimuli.

Reisbick et al. teach that DHA levels will correlate simultaneously with both levels of dopamine and Dopamine2 receptors and certain behaviors. (page 419).

It would have been obvious to one of ordinary skill in the art that animals treated with the pet food product of Reinhart would influence the behavior of the animals because Reinhart teaches that pet food product improved the general comfort and well-being of the animals and because Reisbick et al. that DHA affects certain behaviors and that dietary deficiency and supplementation of omega-3 fatty acids have been associated with several effects on behavior. Therefore, one of ordinary skill in the art would reasonably expect that the pet food product comprising omega-3 fatty acids particularly, DHA as active agent would have a positive effect on animal behavior in Reinhart as modified by Reisbick et al. One of ordinary skill in the art would recognize that the animals that have consumed such product would have better or different behavior because the product improved the general comfort and well-being of the animals and the product contains omega-e fatty acid particularly DHA that influence animal behavior as taught by Reisbick et al. There is a reasonable expectation of successfully influencing behavior of the dog by providing comfort food that contains DHA as an active agent which improves general comfort and well-being of the animals.

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For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.

None of the claims are allowed.

Any rejection of record not addressed herein is withdrawn.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER M. KIM whose telephone number is (571)272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brandon Fetterolf can be reached on 571-272-2919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JENNIFER M KIM/
Primary Examiner, Art Unit 1628

Jmk
January 20, 2010